

AGENCY AGREEMENT

THIS AGREEMENT dated August 2, 2022 is made

BETWEEN

DEPARTURE BAY CAPITAL CORP.

Suite 228, 1122 Mainland Street
Vancouver, British Columbia V6B 5L1

(the “**Issuer**”)

AND

CANACCORD GENUITY CORP.

P.O. Box 10337
Pacific Centre
Suite 2200 – 609 Granville Street
Vancouver, British Columbia V7Y 1H2

(the “**Agent**”)

WHEREAS:

A. The Issuer wishes to raise money in accordance with the CPC Policy (as defined herein) and for the purposes set forth in its Prospectus (as defined herein), which is to be filed by the Issuer with the Regulatory Authorities (as defined herein), by offering for sale the Shares (as defined herein); and

B. The Issuer wishes to appoint the Agent to distribute the Shares, and the Agent wishes to accept the appointment on the terms and conditions of this Agreement.

THE PARTIES to this Agreement therefore agree:

1. DEFINITIONS

In this Agreement:

“Administration Fee” has the meaning given to it in Subsection 7.3;

“Agent” means Canaccord Genuity Corp.;

“Agent’s Commission” has the meaning given to it in Subsection 7.1;

“Agent’s Fees” means the fees which are set out in this Agreement in Section 7 and which are payable by the Issuer to the Agent in consideration of the services performed by the Agent under this Agreement;

“Agent’s Warrants” means the non-transferable warrants to purchase Common Shares which will be issued as part of the Agent’s Fees and which have the terms provided in this Agreement and in the Certificates;

“Agent’s Warrant Shares” means any Common Shares issued on exercise of the Agent’s Warrants;

“Agreement” means this Agency Agreement between the Issuer and the Agent;

“Agreement in Principle” has the meaning defined in the CPC Policy;

“Applicable Legislation” means the securities acts in the Selling Provinces, the regulations and rules made thereunder, all administrative policy statements, instruments, blanket orders, notices, directions and rulings issued by the Commissions and the rules and policies of the Exchange, in particular, the CPC Policy;

“Approval Date” means the date the Common Shares are listed on the Exchange;

“Board of Directors” means the board of directors of the Issuer;

“Business Day” means a day which is not a Saturday, Sunday or a statutory holiday in the Province of British Columbia;

“Certificates” means the certificates representing the Agent’s Warrants;

“Closing” means the closing of the purchase and sale, and the issuance by the Issuer, of the Shares;

“Closing Day” means such day following the Offering Day as may be agreed to by the Issuer and the Agent on which the Closing takes place;

“Commissions” means the securities commissions in the Selling Provinces;

“Common Shares” means the issued and outstanding common shares in the capital of the Issuer;

“Confirmation” has the meaning given to it in Subsection 13.1;

“CPC Policy” means Policy 2.4 of the Exchange entitled, “Capital Pool Companies” as may be amended by the Exchange from time to time;

“Distribution” means the distribution or sale of the Shares pursuant to this Agreement;

“Effective Date” means the date on which the Final Receipt is issued;

“Engagement Agreement” means the engagement letter dated March 8, 2022 between the Agent and the Issuer;

“Exchange” means the TSX Venture Exchange Inc.;

“Final Prospectus” means the final prospectus filed or intended to be filed by the Issuer with the Regulatory Authorities in connection with the Offering and any amendments to the final prospectus which may be filed with the Regulatory Authorities;

“Final Receipt” means the receipt issued for the final Prospectus, or any amendment thereto, by the Principal Regulator pursuant to NP 11-202, representing a final receipt for the Prospectus in each of the Selling Provinces;

“Financing” has the meaning given to it in Subsection 16.1;

“Financing Notice” has the meaning given to it in Subsection 16.1;

“Governmental Entity” means: (i) any multinational, federal, provincial, state, municipal or local government or public body or any department, court, commission, board, bureau, agency or instrumentality, domestic or foreign; (ii) any subdivision, agent, commission, board or authority of those entities; or (iii) any public, quasi-governmental or private body exercising a regulatory, expropriation or taxing authority under or for the account of those entities;

“Indemnitor” has the meaning given to it in Subsection 15.1;

“Issuer” means Departure Bay Capital Corp.;

“Material Change” has the meaning defined in the Applicable Legislation;

“Material Fact” has the meaning defined in the Applicable Legislation;

“Minimum Subscription” has the meaning given to it in Subsection 8.1;

“Misrepresentation” has the meaning defined in the Applicable Legislation;

“NP 11-202” means National Policy 11-202 – *Process for Prospectus Reviews in Multiple Jurisdictions*;

“Offering” means the offering of the Shares under the Prospectus;

“Offering Day” means the day chosen by the Agent to contract the purchases of Shares by the Purchasers;

“Offering Price” means \$0.10 per Share;

“Officers’ Certificate” has the meaning given to it in Paragraph 6.1(c);

“Person” means an individual, a legal person (before or after it comes into existence), a partnership, a trust, a Governmental Entity as well as any other entity or any group of persons;

“Personnel” has the meaning given to it in Subsection 15.1;

“Plans” has the meaning given to it in Subsection 13.2;

“Preliminary Prospectus” means the preliminary prospectus of the Issuer dated May 3, 2022, which was filed by the Issuer with the Regulatory Authorities on May 3, 2022 in connection with the Offering, and any amendments to the preliminary prospectus which may be filed with the Regulatory Authorities;

“Preliminary Receipt” means the receipt issued for the Preliminary Prospectus by the Principal Regulator on May 4, 2022 pursuant to NP 11-202;

“Principal Regulator” means the British Columbia Securities Commission;

“Proceeds” means the gross proceeds of the Offering, less:

- (i) the Agent’s Commission;
- (ii) the Administration Fee;
- (iii) the expenses of the Agent in connection with the Offering which have not been pre-paid by the Issuer; and
- (iv) any amount already received by the Issuer;

“Prospectus” means collectively the Preliminary Prospectus and the Final Prospectus;

“Purchasers” means all purchasers of the Shares under the Offering;

“Q.T. Notice” has the meaning given to it in Subsection 16.2;

“Q.T. Reports” has the meaning given to it in Subsection 16.3;

“Qualifying Transaction” has the meaning defined in the CPC Policy;

“Regulatory Authorities” means the Commissions and the Exchange;

“ROFR Termination Date” has the meaning given to it in Subsection 16.1;

“Securities” means the Shares, Agent’s Warrants and Agent’s Warrant Shares;

“Selling Provinces” means British Columbia and Alberta and such other provinces as may be agreed to by the Issuer and the Agent;

“Shares” means the 2,000,000 previously unissued common shares in the capital of the Issuer to be offered by the Issuer pursuant to this Agreement having the terms provided in this Agreement;

“Significant Assets” has the meaning defined in the CPC Policy;

“Sponsorship” has the meaning defined in the Policy 2.2 of the Exchange entitled “Sponsorship and Sponsorship Requirements” as may be amended by the Exchange from time to time; and

“Target Company” has the meaning defined in the CPC Policy.

2. APPOINTMENT OF AGENT

The Issuer appoints the Agent as its exclusive agent and the Agent accepts the appointment and will act as the exclusive agent of the Issuer to offer the Shares for sale, on behalf of the Issuer, under the Prospectus at the Offering Price on a commercially reasonable efforts basis in the Selling Provinces.

3. THE SHARES

The Shares will be issued and registered in the names and denominations reasonably requested by the Agent.

4. FILING OF PROSPECTUS

4.1 The Issuer will cause the Prospectus to be filed with the Regulatory Authorities, will deliver all necessary copies of the Prospectus to the Regulatory Authorities and will use its best efforts to cause the Prospectus to be accepted by the Regulatory Authorities and have the Final Receipt issued.

4.2 The Issuer will provide the Agent with as many copies of the Prospectus as the Agent reasonably requests.

4.3 Delivery of the Prospectus and any amendment thereto shall constitute a representation and warranty by the Issuer to the Agent that all information and statements (except information and statements relating solely to the Agent) contained in the Prospectus and any amendment thereto are true and correct in all material respects at the time of delivery thereof and contain no Misrepresentations and constitute full, true and plain disclosure of all Material Facts relating to the Issuer and the Securities and that no Material Fact or material information has been omitted therefrom (except facts or information relating solely to the Agent) which is required to be stated therein or is necessary to make statements of information contained therein not misleading in light of the circumstances under which they were made. Such delivery shall also constitute the Issuer's consent to the Agent's use of the Prospectus, and any amendment thereto for the purpose of the sale of Shares in compliance herewith and with the Applicable Legislation.

4.4 The Issuer acknowledges that the Agent will be conducting a due diligence investigation of the Issuer's business, securities, affairs, management, directors and an assessment of management's ability to find a Qualifying Transaction and manage the affairs of a public company. The Issuer covenants that it will afford the Agent with access to the contracts, financial statements, personal information forms, corporate records and other documents the Agent may reasonably request.

5. LISTING APPLICATION AND CONDUCT OF THE OFFERING

5.1 Prior to the Closing Day, the Issuer will make application to list the Shares and Agent's Warrant Shares on the Exchange and conditional approval of such application must be obtained from the Exchange prior to filing the final Prospectus.

5.2 Following the Effective Date and after consulting with the Exchange, the Issuer and the Agent will set the Offering Day.

5.3 The Offering Day will be on or before the day which is:

- (a) 90 days after the Effective Date; or
- (b) if a receipt is issued for an amendment to the Final Prospectus, 90 days after the date of such receipt,

and in any event, no later than 180 days after the Effective Date.

5.4 Immediately after the Offering Day, the Issuer shall take all necessary steps to complete and file with the Exchange its application for listing with all other documentation required by the Exchange, to allow for the listing and posting for trading of the Common Shares on or before the Closing Day.

5.5 The Agent will advise the Issuer and its counsel in writing when the Distribution under the Prospectus is complete.

6. OPINIONS AND CERTIFICATES

6.1 On the Closing Day, the Issuer will deliver the following documents to the Agent and its counsel in a form acceptable to them:

- (a) evidence of the necessary approval of the Regulatory Authorities for the Offering;
- (b) an opinion of counsel for the Issuer, dated as of the Closing Day and addressed to the Agent and its counsel, relating to any legal matter in connection with the creation, issuance and sale of the Securities for which the Agent may reasonably request an opinion;
- (c) a certificate of the Issuer, dated as of the Closing Day and signed by the chief executive officer and chief financial officer of the Issuer or such other officers approved by the Agent, certifying certain facts relating to the Issuer and its affairs (the “**Officers’ Certificate**”); and
- (d) any other certificates, comfort letters or opinions in connection with any matter related to the Prospectus which are reasonably requested by the Agent or its counsel.

7. AGENT’S FEES

7.1 In consideration of the services performed by the Agent under this Agreement, the Issuer agrees to pay the Agent a commission of 10% of the gross proceeds of the Offering, payable in cash, whether the Shares are purchased by the Agent for its own account or for its clients or purchased by other members of the Exchange for their own accounts or for their clients (the “**Agent’s Commission**”).

7.2 In consideration for acting as Agent, the Issuer will issue Agent’s Warrants to the Agent or to members of its selling group as directed by the Agent entitling the Agent to purchase such number of Agent’s Warrant Shares as is equal to 10% of the number of Shares sold under the Offering. The Agent’s Warrants will be non-transferable and one Agent’s Warrant will entitle the holder to purchase one Share of the Issuer at \$0.10 per Share. The right to purchase Agent’s Warrant Shares under the Agent’s Warrants may be exercised at any time up to the close of business 60 months from the Closing Day at the Offering Price, provided that no more than 50% of the aggregate number of Agent’s Warrant Shares which may be acquired by the Agent on exercise of the Agent’s Warrants will be sold by the Agent prior to completion of the Qualifying Transaction. The terms governing the Agent’s Warrants will include, among other things, provisions for the appropriate adjustment in the class, number and price of the Agent’s Warrant Shares upon the occurrence of certain events, including any subdivision, consolidation or reclassification of the Common Shares, the payment of stock dividends or the amalgamation of the Issuer. The issue of the Agent’s Warrants will not restrict or prevent the Issuer from obtaining any other financing, nor from issuing additional securities or rights during the period within which the Agent’s Warrants are exercisable.

7.3 In consideration of the Agent's services in connection with the development and establishment of an acceptable share structure, the coordination and review of the Offering and the Prospectus and the monitor of the required legal, accounting and regulatory requirements, the Issuer will pay the Agent, on completion or cancellation of the Offering, an administration fee of \$15,000 (the "**Administration Fee**"). The Issuer's obligation to pay the Administration Fee shall survive the termination of this Agreement.

8. MINIMUM SUBSCRIPTION

8.1 The Offering is subject to a minimum subscription of 2,000,000 Shares (the "**Minimum Subscription**").

8.2 All funds received by the Agent for subscriptions will be held in trust by the Agent or placed in trust with the Issuer's registrar and transfer agent until the Minimum Subscription has been obtained.

8.3 Notwithstanding any other term of this Agreement, all subscription funds received by the Agent will be returned to the subscribers without interest or deduction if the Minimum Subscription is not obtained by 5:00 p.m. on the Offering Day unless the subscribers have otherwise instructed the Agent.

9. CLOSING

9.1 On Closing, if the Issuer has satisfied all of its obligations under this Agreement, the Issuer will deliver the Certificates to the Agent and will deposit the Shares with CDS Clearing and Depository Services Inc. against payment of the Proceeds.

9.2 If the Issuer has satisfied all of its obligations under this Agreement, on Closing, the Agent will pay the Proceeds to the Issuer against delivery of the Certificates and upon receipt of satisfactory evidence that the Shares have been deposited with CDS Clearing and Depository Services Inc.

9.3 The obligation of the Agent to pay the Proceeds to the Issuer shall be subject to the following conditions precedent:

- (a) completion by the Agent of due diligence on the Issuer to its reasonable satisfaction;
- (b) the Issuer shall have performed or complied with each covenant and obligation herein provided on its part to be performed or complied with;
- (c) each of the representations and warranties of the Issuer herein shall continue to be true, and the Officers' Certificate shall contain certification to that effect;
- (d) the Issuer shall have provided to the Agent such customary closing documents that the Agent or its counsel may reasonably request; and

- (e) the Issuer shall have, to the satisfaction of the Agent's counsel, taken or caused to be taken all steps and proceedings which may be requisite under the Applicable Legislation to qualify the distribution of the Shares to the public in the Selling Provinces through registrants who have complied with the provisions of the Applicable Legislation and to qualify the distribution of the Agent's Warrants to the Agent and any members of its selling group, including the filing and the obtaining of the Preliminary Receipt and the Final Receipt.

10. COVENANTS AND OBLIGATIONS OF THE ISSUER

10.1 The Issuer covenants and agrees that it has materially complied with and will abide by and comply with all Applicable Legislation and will complete all filings required of the Issuer under the Applicable Legislation and by the Exchange in connection with the Offering, the Prospectus and the listing of the Common Shares.

10.2 The Issuer covenants and agrees that:

- (a) it has not and will not carry on any business other than the identification and evaluation of assets or businesses in connection with a potential Qualifying Transaction, until completion of a Qualifying Transaction; and
- (b) it has not entered into an Agreement in Principle.

10.3 If, after the Prospectus is filed with the Regulatory Authorities but before the conclusion of the Distribution, a Material Change or change in a Material Fact occurs in the affairs of the Issuer, the Issuer will:

- (a) notify the Agent immediately, in writing, with full particulars of the change;
- (b) if required by Applicable Legislation, file with the Regulatory Authorities as soon as practicable, and in any event no later than 10 days after the change occurs, an amendment to the Prospectus in a form acceptable to the Agent disclosing the Material Change; and
- (c) provide as many copies of that amendment to the Agent as the Agent may reasonably request.

10.4 The Issuer shall in good faith discuss with the Agent any fact or change in circumstances (actual and anticipated, contemplated or threatened, whether financial or otherwise) which is of such a nature that there is reasonable doubt as to whether notice in writing need be given to the Agent pursuant to the previous Subsection.

10.5 Until the Issuer completes a Qualifying Transaction, the Issuer covenants to comply with all applicable provisions of the CPC Policy. The Issuer will use its commercially reasonable efforts to maintain its status as a reporting issuer not in default of any Applicable Legislation in the Selling Provinces for a period of 24 months following the date that its Common Shares are listed and posted for trading on the Exchange and will use its commercially reasonable efforts to maintain its listing on the Exchange during such 24 months.

10.6 Until the Qualifying Transaction has occurred, the Issuer shall notify the Agent of:

- (a) any change proposed to be made in the corporate undertaking of the Issuer;

- (b) any proposed issuance of a control block of securities (meaning a holding of Common Shares or other securities of the Issuer or both held by a Person or combination of Persons acting jointly or in concert to which are attached more than 20% of the voting rights attached to all outstanding securities of the Issuer carrying voting rights);
- (c) any Agreement in Principle being reached with respect to a Qualifying Transaction;
- (d) any proposed change to the constitution of the board of directors of the Issuer, or to the membership of senior management of the Issuer, including any resignations, terminations or departures of members of the Board of Directors or senior management; and
- (e) any circumstances where the Issuer does not expect to comply with a filing deadline imposed by the Regulatory Authorities, such notification to be provided at least 10 Business Days before the deadline;

forthwith upon the proposal of such change, issuance, sale, disposition or agreement.

11. TERMINATION

11.1 The Agent may terminate its obligations under this Agreement by notice in writing to the Issuer at any time before the Closing if:

- (a) there is an event, accident, governmental law or regulation or other occurrence of any nature which, in the opinion of the Agent, seriously affects or will seriously affect the financial markets or the business of the Issuer or the ability of the Agent to perform its obligations under this Agreement or an investor's decision to purchase Shares;
- (b) an adverse Material Change or change in a Material Fact relating to any of the Securities occurs or is announced by the Issuer;
- (c) following a consideration of the history, business, products, property or affairs of the Issuer or its principals and promoters, or the state of the financial markets in general, or the state of the market for the Issuer's securities in particular, or the possibility of investors exercising their statutory rights to withdraw from a purchase of the Issuer's securities, the Agent determines, in its sole discretion, that it is not in the interest of investors to complete the Offering;
- (d) the Agent is not satisfied, in its sole discretion, with the results of its due diligence review and investigation of the Issuer;
- (e) any material term of this Agreement remains outstanding or uncompleted at any time;
- (f) the Shares cannot, in the opinion of the Agent, be profitably marketed due to the state of the financial markets, or the market for the Shares in particular; or
- (g) an enquiry or investigation (whether formal or informal) in relation to the Issuer, or the Issuer's directors, officers or promoters, is commenced or threatened by an officer or official of any competent authority.

11.2 The Agent may terminate its obligations under this Agreement at any time if:

- (a) any order to cease trading (including communicating with Persons in order to obtain expressions of interest) in the Common Shares of the Issuer is made by a competent regulatory authority and that order is still in effect;
- (b) the Issuer is in breach of any term of this Agreement; or
- (c) the Agent determines that any of the representations or warranties made by the Issuer in this Agreement is false or has become false.

11.3 If the Agent exercises its right to terminate this Agreement, then the Issuer will immediately issue a press release setting out particulars of the termination.

12. WARRANTIES AND REPRESENTATIONS

12.1 The Issuer warrants and represents to the Agent that:

- (a) the Issuer is a valid and subsisting corporation duly incorporated and in good standing under the laws of the jurisdiction in which it is incorporated;
- (b) the Issuer is duly registered and licensed to carry on business in the jurisdictions in which it carries on business or owns property where so required by the laws of that jurisdiction and is not otherwise precluded from carrying on business or owning property in such jurisdictions by any other commitment, agreement or document;
- (c) the Issuer has full corporate power and authority to carry on its business as now carried on by it and to undertake the Offering and this Agreement has been, or will be by the Closing, duly authorized by all necessary corporate action on the part of the Issuer;
- (d) the Issuer has not carried on any business other than the identification and evaluation of assets or business in connection with a potential Qualifying Transaction, and will continue to limit its business in this manner until the completion of the Qualifying Transaction;
- (e) the Issuer has not entered into an Agreement in Principle;
- (f) all of the material transactions of the Issuer have been promptly and properly recorded or filed in its books or records and its minute books or records contain all records of the meetings and proceedings of its directors, shareholders, and other committees, if any, since inception;
- (g) the authorized capital of the Issuer is as disclosed in the Prospectus and the issued and outstanding common shares of the Issuer are fully paid and non-assessable and, except as disclosed in the Prospectus, no Person has any right, agreement or option, present or future, contingent or absolute, or any right capable of becoming such a right, agreement or option, for the issue or allotment of any unissued shares in the capital of the Issuer or any other security convertible into or exchangeable for any such shares, or to require the Issuer to purchase, redeem or otherwise acquire any of the issued and outstanding shares in its capital;
- (h) the Issuer has no subsidiaries;

- (i) the Issuer will reserve or set aside sufficient Common Shares in its treasury to issue the Shares and Agent's Warrant Shares;
- (j) the Prospectus will contain full, true and plain disclosure of all Material Facts in relation to the Issuer, its business and its securities, will contain no Misrepresentations and will be accurate in all material respects and will omit no fact, the omission of which will make such representations misleading or incorrect;
- (k) the financial statements of the Issuer which form part of the Prospectus have been prepared in accordance with International Financial Reporting Standards, present fairly, in all material respects, the financial position and all material liabilities (accrued, absolute, contingent or otherwise) of the Issuer as at the date of the financial statements and there have been no adverse Material Changes in the financial position of the Issuer since the date thereof, and the business of the Issuer has been carried on in the usual and ordinary course consistent with past practice except as fully and plainly disclosed in the Prospectus;
- (l) the auditors of the Issuer who audited the financial statements of the Issuer for the period from incorporation on February 16, 2022 to February 28, 2022 and who provided their audit report thereon are independent public accountants as required under Applicable Legislation and there has never been a reportable event (within the meaning of National Instrument 51-102 – *Continuous Disclosure Obligations*) with the present auditors of the Issuer;
- (m) the Issuer has complied and will comply fully with the requirements of all applicable corporate and securities laws and administrative policies and directions, including, without limitation, Applicable Legislation and its regulations and the *Business Corporations Act* (British Columbia) in relation to the issue and trading of its securities and in all matters relating to the Offering;
- (n) the Issuer is in compliance with all applicable laws, regulations and statutes in the jurisdictions in which it carries on business and which may materially affect the Issuer, has not received a notice of non-compliance, nor knows of, nor has reasonable grounds to know of, any facts that could give rise to a notice of non-compliance with any such laws, regulations and statutes, and is not aware of any pending change or contemplated change to any applicable law or regulation or governmental position that would materially affect the business of the Issuer or the business or legal environment under which the Issuer operates;
- (o) the issue and sale of the Securities by the Issuer does not and will not conflict with, and does not and will not result in a breach of, or constitute a default under (A) any statute, rule or regulation applicable to the Issuer including, without limitation, the Applicable Legislation; (B) the constating documents, notice of articles, articles or resolutions of the Issuer which are in effect at the date hereof; (C) any agreement, debt instrument, mortgage, note, indenture, instrument, lease or other document to which the Issuer is a party or by which it is bound; or (D) any judgment, decree or order binding the Issuer or the property or assets of the Issuer;
- (p) the Issuer is not a party to any actions, suits or proceedings which could materially affect its business or financial condition, and to the best of the Issuer's knowledge no such actions, suits or proceedings are contemplated or have been threatened;

- (q) there are no judgments against the Issuer which are unsatisfied, nor are there any consent decrees or injunctions to which the Issuer is subject;
- (r) there is not presently, and will not be until the conclusion of Distribution, any Material Change or change in any Material Fact relating to the Issuer which has not been or will not be fully disclosed in the Prospectus;
- (s) no order ceasing, halting or suspending trading in securities of the Issuer nor prohibiting the sale of such securities has been issued to and is outstanding against the Issuer or its directors, officers or promoters or against any other companies that have common directors, officers or promoters and no investigations or proceedings for such purposes are pending or threatened;
- (t) the Issuer has filed all federal, provincial, local and foreign tax returns which are required to be filed, or has requested extensions thereof, and has paid all taxes required to be paid by it and any other assessment, fine or penalty levied against it, or any amounts due and payable to any governmental authority, to the extent that any of the foregoing is due and payable;
- (u) the Issuer has established on its books and records reserves which are adequate for the payment of all taxes not yet due and payable and there are no liens for taxes on the assets of the Issuer except for taxes not yet due, and there are no audits of any of the tax returns of the Issuer which are known by the Issuer's management to be pending, and there are no claims which have been or, to the best of the Issuer's knowledge, may be asserted relating to any such tax returns which, if determined adversely, would result in the assertion by any governmental agency of any deficiency which would have a material adverse effect on the properties, business or assets of the Issuer;
- (v) the Issuer does not have any loans or other indebtedness outstanding which has been made to any of its shareholders, officers, directors or employees, past or present, or any Person not dealing at "arm's length" (as such term is used in the *Income Tax Act (Canada)*);
- (w) other than the Agent, no Person, firm or corporation acting or purporting to act at the request of the Issuer is entitled to any brokerage, agency or finder's fee in connection with the transactions described herein; and
- (x) the warranties and representations in this Subsection are true and correct and will remain so as of the conclusion of the distribution under the Prospectus.

12.2 The Agent warrants and represents to the Issuer that:

- (a) it is a valid and subsisting corporation duly incorporated and in good standing under the law of the jurisdiction in which it was incorporated, continued or amalgamated;
- (b) it has full corporate power and authority to enter into this Agreement and to fulfill its obligations hereunder;
- (c) it is a member in good standing of the Exchange; and

- (d) it has complied with and will fully comply with the requirements of all Applicable Legislation, its rules and regulations and the by-laws and rules of the Exchange, in relation to trading in the Securities and all matters relating to the Offering.

13. ELIGIBILITY FOR INVESTMENT

13.1 The Issuer covenants that it has applied to list the Shares on the Exchange as of the day before the Closing, which listing shall be followed by an immediate halt in trading of the Shares in order to allow the Issuer to satisfy the conditions of the Exchange and to have the Shares listed and posted for trading prior to the Closing Day (the “**Confirmation**”).

13.2 The Issuer acknowledges that the Agent is relying on the Confirmation with respect to sales of the Shares into registered retirement savings plans, registered retirement income funds, deferred profit sharing plans, registered education savings plans, registered disability savings plans and tax-free savings accounts (collectively, the “**Plans**”) and agrees that, if the Issuer has fulfilled its obligations under Subsection 13.1 by obtaining a Confirmation and if the Exchange does not issue a bulletin in relation to the listing of the Shares at the close of market on the Business Day before the Closing, the Issuer will immediately notify the Agent and Closing may be delayed, at the sole discretion of the Agent.

14. EXPENSES OF AGENT

14.1 The Issuer will pay all of the expenses of the Offering and all the expenses reasonably incurred by the Agent in connection with the Offering, including, without limitation, the fees and expenses of the solicitors for the Agent and other reasonable expenses and costs of the Agent, including taxes and disbursements.

14.2 The Issuer will pay the expenses referred to in the previous Subsection even if the Prospectus and this Agreement are not accepted by the Regulatory Authorities or the transactions contemplated by this Agreement are not completed or this Agreement is terminated, unless the failure of acceptance or completion or the termination is the result of a breach of this Agreement by the Agent.

14.3 The expenses will be payable on Closing Day or the Agent may, from time to time, render accounts to the Issuer for its expenses for payment on the dates set out in the accounts.

14.4 The Issuer authorizes the Agent to deduct its reasonable expenses in connection with the Offering from the proceeds of the Offering, including expenses for which an account has not yet been rendered to the Issuer.

14.5 The Agent acknowledges receipt of the sum of \$15,000, with such funds representing an advance with respect to expenses payable pursuant to this Section.

15. INDEMNITY

15.1 The Issuer (the “**Indemnitor**”) hereby agrees to indemnify and hold the Agent, and its affiliates, and each of their directors, officers, employees and agents (hereinafter referred to as the “**Personnel**”) harmless from and against any and all expenses, losses (other than loss of profits), fees, claims, actions (including shareholder actions, derivative actions or otherwise), damages, obligations, or liabilities, whether joint or several, and the reasonable fees and expenses of their counsel, that may be incurred in advising with respect to and/or defending any actual or threatened claims, actions, suits, investigations or proceedings to which the Agent

and/or its Personnel may become subject or otherwise involved in any capacity under any statute or common law, or otherwise insofar as such expenses, losses, claims, damages, liabilities or actions arise out of or are based, directly or indirectly, upon the performance of professional services rendered to the Indemnitor by the Agent and its Personnel hereunder, or otherwise in connection with the matters referred to in this Agreement (including the aggregate amount paid in reasonable settlement of any such actions, suits, investigations, proceedings or claims that may be made against the Agent and/or its Personnel, provided that the Indemnitor has agreed to such settlement), provided, however, that this indemnity shall not apply to the extent that a court of competent jurisdiction in a final judgment that has become non-appealable shall determine that:

- (a) the Agent and/or its Personnel have been grossly negligent or have committed willful misconduct or any fraudulent act in the course of such performance; and
- (b) the expenses, losses, claims, damages or liabilities, as to which indemnification is claimed, were directly caused by the gross negligence, willful misconduct or fraud referred to in (a), above.

Without limiting the generality of the foregoing, this indemnity shall apply to all expenses (including legal expenses), losses, claims and liabilities that the Agent may incur as a result of any action or litigation that may be threatened or brought against the Agent.

15.2 If for any reason (other than the occurrence of any of the events itemized in (a) and (b), above), the foregoing indemnification is unavailable to the Agent or any Personnel or insufficient to hold the Agent or any Personnel harmless, then the Indemnitor shall contribute to the amount paid or payable by the Agent or any Personnel as a result of such expense, loss, claim, damage or liability in such proportion as is appropriate to reflect not only the relative benefits received by the Indemnitor on the one hand and the Agent or any Personnel on the other hand but also the relative fault of the Indemnitor and the Agent or any Personnel, as well as any relevant equitable considerations; provided that the Indemnitor shall in any event contribute to the amount paid or payable by the Agent or any Personnel as a result of such expense, loss, claim, damage or liability and any excess of such amount over the amount of the fees received by the Agent hereunder.

15.3 The Indemnitor agrees that in case any legal proceeding shall be brought against the Indemnitor and/or the Agent by any governmental commission or regulatory authority or any stock exchange or other entity having regulatory authority, either domestic or foreign, or shall investigate the Indemnitor and/or the Agent, and/or any Personnel of the Agent shall be required to testify in connection therewith or shall be required to respond to procedures designed to discover information regarding, in connection with, or by reason of the performance of professional services rendered to the Indemnitor by the Agent, the Agent shall have the right to employ its own counsel in connection therewith provided the Agent acts reasonably in selecting such counsel, and the reasonable fees and expenses of such counsel as well as the reasonable costs (including an amount to reimburse the Agent for time spent by the Agent's Personnel in connection therewith) and out-of-pocket expenses incurred by their Personnel in connection therewith shall be paid by the Indemnitor as they occur.

15.4 Promptly after receipt of notice of the commencement of any legal proceeding against the Agent or any Personnel or after receipt of notice of the commencement or any investigation, which is based, directly or indirectly, upon any matter in respect of which indemnification may be sought from the Indemnitor, the Agent will notify the Indemnitor in writing of the commencement thereof and, throughout the course thereof, will provide copies of all relevant documentation to the Indemnitor, will keep the Indemnitor advised of the progress thereof and will discuss with the Indemnitor all significant actions proposed. However, the failure by the Agent to notify the Indemnitor will not relieve the Indemnitor of its obligations to indemnify the Agent and/or any

Personnel. The Indemnitor shall, on behalf of itself and the Agent and/or any Personnel, as applicable, be entitled to (but not required) to assume the defence of any suit brought to enforce such legal proceeding; provided, however, that the defence shall be conducted through legal counsel acceptable to the Agent and/or any Personnel, as applicable, acting reasonably, that no settlement of any such legal proceeding may be made by the Indemnitor without the prior written consent of the Agent and/or any Personnel, as applicable, and none of the Agent and/or any Personnel, as applicable, shall be liable for any settlement of any such legal proceeding unless it has consented in writing to such settlement, such consent not to be unreasonably withheld. The Agent and its Personnel shall have the right to appoint its or their own separate counsel at the Indemnitor's cost provided the Agent acts reasonably in selecting such counsel.

15.5 The indemnity and contribution obligations of the Indemnitor shall be in addition to any liability which the Indemnitor may otherwise have, shall extend upon the same terms and conditions to the Personnel of the Agent and shall be binding upon and inure to the benefit of any successors, assigns, heirs and personal representatives of the Indemnitor, the Agent and any of the Personnel of the Agent. The foregoing provisions shall survive the completion of professional services rendered under this Agreement or any termination of this Agreement.

16. RIGHT OF FIRST REFUSAL

16.1 The Issuer will notify the Agent (the "**Financing Notice**") of the terms of any further brokered equity financing (or securities convertible into equity) (a "**Financing**") that it requires or proposes to obtain during the term of this Agreement and until that day (the "**ROFR Termination Date**") which is the earlier of:

- (a) that day which falls 24 months from the Approval Date; and
- (b) the date of closing of the Qualifying Transaction;

and the Agent will have the right of first refusal to provide any such Financing proposed during that period. The Agent's right of first refusal will also pertain to any brokered equity financing that is proposed to be completed concurrently or in connection with the Issuer's Qualifying Transaction as provided herein notwithstanding that such financing is completed by an offering of securities in a target issuer involved in the Qualifying Transaction. For greater certainty, the Issuer shall use commercially reasonable efforts to ensure that any Target Company that will conduct a brokered equity financing in connection with the Qualifying Transaction agrees to grant the Agent a right of first refusal to provide such financing on the terms contained herein.

16.2 The Issuer will notify the Agent (the "**Q.T. Notice**") of any Agreement in Principle which is reached with respect to a Qualifying Transaction during the term of this Agreement and before the ROFR Termination Date for which Sponsorship is required, and not waived, by the Exchange, and the Agent will have the right of first refusal to act as the Issuer's sponsor with respect to the Qualifying Transaction.

16.3 In addition to the Q.T. Notice and subject to the parties entering into a customary confidentiality agreement, the Issuer will use commercially reasonable efforts to provide, in compliance with any pre-existing non-disclosure or confidentiality agreement(s) between the Issuer and any Target Company, the Agent with:

- (a) appropriate financial information for any Target Company the Issuer proposes to purchase in the Qualifying Transaction, prepared as of a date satisfactory to the Agent;

- (b) a copy of the Target Company's business plan; and
- (c) copies of all such other information concerning the business of the Target Company as the Agent may request;

(collectively, the "**Q.T. Reports**") in order that the Agent may complete its right of first refusal analysis.

16.4 The right of first refusal must be exercised by the Agent:

- (a) within 10 days following the receipt of the Financing Notice by notifying the Issuer that it will provide such financing on the terms set out in the Financing Notice; or
- (b) within 10 days following the receipt of the Q.T. Notice and the Q.T. Reports by notifying the Issuer that it will provide Sponsorship on terms to be mutually agreed upon by the parties.

16.5 If the Agent fails to give the applicable notice within 10 days, or if the Agent gives notice that it does not wish to exercise its right of first refusal, the Issuer will then be free to make other arrangements to obtain Financing or Sponsorship from another source on the terms or on terms no less favourable to the Issuer, subject to obtaining the acceptance of the Regulatory Authorities.

16.6 The right of first refusal will not terminate if, on receipt of any Financing Notice or Q.T. Notice from the Issuer, the Agent fails to exercise the right, and the Issuer completes a Financing or Sponsorship with another source on the same terms or terms no less favourable to the Issuer. The Agent will, until the ROFR Termination Date, retain its right of first refusal with respect to any subsequent financing or sponsorship opportunities as set out in Subsections 16.1 and 16.2.

17. ASSIGNMENT AND SELLING GROUP PARTICIPATION

17.1 The Agent will not assign this Agreement or any of its rights under this Agreement or, with respect to the Securities, enter into any agreement in the nature of an option or a sub-option unless and until, for each intended transaction, the Agent has obtained the consent of the Issuer and notice has been given to and accepted by the Regulatory Authorities.

17.2 The Issuer will not assign the Agreement or any of its rights under this Agreement or, with respect to the Securities, enter into any agreement in the nature of an option or a sub-option unless and until, for each intended transaction, the Issuer has obtained the consent of the Agent.

17.3 The Agent may offer selling group participation in the normal course of the brokerage business to selling groups of other licensed dealers, brokers and investments dealers, who may or who may not be offered part of the commissions or warrants to be received by the Agent pursuant to this Agreement.

18. NOTICES

18.1 Any notice under this Agreement will be given in writing and must be delivered, sent by electronic mail or mailed by prepaid post and addressed to the party to which notice is to be given at the address indicated above, or at another address designated by such party in writing.

18.2 If notice is sent by electronic mail or is delivered, it will be deemed to have been given at the time of delivery.

18.3 If notice is mailed, it will be deemed to have been received 48 hours following the date of mailing of the notice.

18.4 If there is an interruption in normal mail service due to strike, labour unrest or other cause at or prior to the time a notice is mailed, the notice will be sent by electronic mail or will be delivered by hand.

19. TIME

Time is of the essence of this Agreement.

20. SURVIVAL OF REPRESENTATIONS AND WARRANTIES

The representations, warranties, covenants and indemnities of the parties contained in this Agreement will survive the closing of the purchase and sale of the Securities.

21. LANGUAGE

Wherever a singular or masculine expression is used in this Agreement, that expression is deemed to include the plural, feminine or the body corporate where required by the context.

22. ENUREMENT

This Agreement enures to the benefit of and is binding on the parties to this Agreement and their successors and permitted assigns.

23. CURRENCY

Unless otherwise specified, all amounts expressed in dollars in this Agreement are in Canadian dollars.

24. REFERENCE

Unless the context otherwise requires, any reference in this Agreement to a specific part, section, clause or rule of a statute or regulation refers to it as it may be amended, re-enacted or replaced.

25. HEADINGS

The headings in this Agreement are for convenience of reference only and do not affect the interpretation of this Agreement.

26. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement and supersedes any other previous agreement between the parties with respect to the Offering, including but not limited to, the Engagement Agreement, and there are no other terms, conditions, representations or warranties whether express, implied, oral or written by the Issuer or the Agent.

27. COUNTERPARTS

This Agreement may be executed in two or more counterparts, each of which will be deemed to be an original and all of which will constitute one agreement, effective as of the reference date given above.

28. LAW

This Agreement and its application and interpretation will be governed exclusively by the laws prevailing in British Columbia and the laws of Canada. The parties to this Agreement consent to the jurisdiction of the courts of British Columbia, which courts shall have exclusive jurisdiction over any dispute of any kind arising out of or in connection with this Agreement.

This Agreement was executed and delivered as of the date given above.

DEPARTURE BAY CAPITAL CORP.

Per: /s/ Trevor Treweeke
Authorized Signatory

CANACCORD GENUITY CORP.

Per: /s/ Glenda Chin
Authorized Signatory